

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of M3)
Consulting, LLC dba M3 Energy for) Case No. 14-405-EL-AGG
Certification as a Competitive Retail Power)
Marketer.)

In the Matter of the Application of M3)
Consulting, LLC dba M3 Energy for) Case No. 14-792-GA-AGG
Certification as a Competitive Retail)
Natural Gas Marketer.)

ENTRY

The attorney examiner finds:

- (1) On March 13, 2014, and April 28, 2014, M3 Consulting, LLC dba M3 Energy (M3 Energy or Applicant) filed applications for certification as a competitive retail power broker/aggregator (Case No. 14-405-EL-AGG [14-405]) and retail natural gas broker/aggregator (Case No. 14-792-GA-AGG [14-792]), respectively. On May 5 and 6, 2014, as amended on June 19, 2014, M3 Energy filed motions for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D) requesting that exhibits C-3 (financial statements) and C-5 (forecasted financial statements) of its applications, which were filed under seal on June 13, 2014, be kept under seal.
- (2) In support of its motions for a protective order, M3 Energy explains that exhibits C-3 and C-5 contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, M3 Energy requests that the information found in exhibits C-3 and C-5 be treated as confidential.
- (3) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended

to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399, 732 N.E. 2d 373 (2000).

- (4) Similarly, Ohio Adm.Code 4901-1-24 allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”
- (5) Ohio law defines a trade secret as “information * * * that satisfies both of the following: (a) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).
- (6) The attorney examiner has examined the information covered by the motions for a protective order filed by M3 Energy, as well as the assertions set forth in the supportive memoranda. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibits C-3 and C-5 of M3 Energy’s 14-405 and 14-792 applications constitutes trade secret information. Release of these documents is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Accordingly, the attorney examiner finds that M3 Energy’s motions for a protective order are reasonable with regard to exhibits C-3 and C-5, which were filed under seal in 14-405 and 14-792 on June 13, 2014; therefore, the motions should be granted.

¹ See *State ex-rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

- (7) Ohio Adm.Code 4901-1-24(F) provides for protective orders to expire after 24 months. Therefore, confidential treatment shall be afforded to exhibits C-3 and C-5 in 14-405 and 14-792 for a period ending 24 months from the effective date of the certificates issued to M3 Energy, or until April 13, 2016, in 14-405 and May 29, 2016, in 14-792. Until those dates, the docketing division should maintain, under seal, exhibits C-3 and C-5, which were filed under seal in 14-405 and 14-792 on June 13, 2014.
- (8) Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If M3 Energy wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to M3 Energy.

It is, therefore,

ORDERED, That the motions for a protective order filed by M3 Energy be granted with regard to the information contained in C-3 and C-5 of M3 Energy's applications in 14-405 and 14-792. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibits C-3 and C-5, which were filed in 14-405 and 14-792 on June 13, 2014, for a period of 24 months, ending on April 13, 2016, in 14-405 and May 29, 2016, in 14-792. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

sef/vrm

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/10/2014 2:35:53 PM

in

Case No(s). 14-0405-EL-AGG, 14-0792-GA-AGG

Summary: Attorney Examiner Entry granting the motions for a protective order filed by M3 Energy with regard to the information contained in exhibits C-3 and C-5 of M3 Energy's applications in 14-405 and 14-792. Further, the Commission's docketing division is directed to maintain, under seal, exhibits C-3 and C-5 for a period of 24 months, ending on April 13, 2016, in 14-405 and May 29, 2016, in 14-792; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio